

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 00-3575

Bohumir Marik,

Appellant,

v.

Buckeye Retirement Co., L.L.C., Ltd.,

Appellee.

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Appeal from the United States
District Court for the Western
District of Missouri.

[UNPUBLISHED]

Submitted: July 27, 2001
Filed: August 2, 2001

Before WOLLMAN, Chief Judge, MORRIS SHEPPARD ARNOLD, and BYE, Circuit Judges.

PER CURIAM.

Bohumir Marik appeals the district court's¹ dismissal of his claims against the Federal Deposit Insurance Corporation (FDIC), and the court's subsequent dismissal of his claims against MNSB Properties, Inc. ("MNSB"), in Marik's quiet title action

¹The Honorable Nanette K. Laughrey, United States District Judge for the Western District of Missouri.

removed from state court.² He also moves for judicial notice of certain court orders in a prior related action.

Having thoroughly reviewed the record, we agree with the district court that Marik's claims are subject to 12 U.S.C. § 1821(d), a provision of the Financial Institutions Reform, Recovery & Enforcement Act of 1989 (FIRREA), which provides mandatory administrative remedies against subject failed financial institutions and bars courts from considering unexhausted claims. Marik's suit is grounded in the pre-receivership conduct of Metro North State Bank, a failed financial institution within the meaning of 12 U.S.C. § 1821(d)(13)(D)(ii), for which FDIC was appointed receiver. It is undisputed that Marik did not exhaust his administrative remedies. We agree with the district court, therefore, that dismissal of FDIC without prejudice was required. See Resolution Trust Corp. Mortgage Trust 1994-N2 v. Haith, 133 F.3d 574, 578-80 (8th Cir. 1998).

We also conclude that the district court did not abuse its discretion in dismissing defendant MNSB: after this lawsuit was filed, MNSB assigned to FDIC all of MNSB's interests in the property that is the subject of this suit. See Fed. R. Civ. P. 25 (c). We clarify that MNSB's dismissal also is without prejudice.

Accordingly, we grant Marik's motion on appeal, but we affirm the district court's orders and judgment. See 8th Cir. R. 47B.

²While this appeal was pending, Buckeye Retirement Co., L.L.C., Ltd., was granted leave to be substituted as appellee for FDIC and MNSB.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.